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- Corporate Manslaughter and Corporate Homicide Act 2007
- Brenda Barrett
- Emeritus Professor of Law



Objectives

- To provide an overview of the Act
- To note the circumstances in which liability will be incurred
- To identify who may be liable
- How does it relate to other laws?



Is the Act in force?

- Most of the Act came into force on 1st April 2008
(Commencement No.1) Order 2008
SI 2008/396
- S.2(1)(d) and s.10 not yet in force
- *The offence created is Corporate Manslaughter in England but known as Corporate Homicide in Scotland*



Overview of the Act – Section by section



- S.1 *Corporate manslaughter*
Creates a new offence
- Ss.2-7 *Relevant duty of care*
Spell out the nature of the offence and the circumstances to which it relates
- S.8 *Gross breach*
Factors for jury
- Ss.9-10 *Remedial orders and publicity orders*
- Ss.11-14 *Application to particular categories of organisation*

s.1 The offence



- (1) An organisation ... is guilty of an offence if the way in which its activities are managed or organised –
 - (a) causes a person's death, and
 - (b) amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased



The s.1 offence applies to:



- S.1(2)
 - A corporation
 - A department or other body listed in Schedule 1
 - A police force
 - A partnership, or a trade union or employer's association that is an employer
- *Schedule 1 was amended (SI 2008/396) on 1st April 2008 because of changes in Government Departments*



When is the liability incurred?



- S.1(3)
An organisation is guilty of an offence ... only if the way in which its activities are managed or organised by its senior management is a substantial element in the breach referred to in subsection (1)
- *Note:*
 - *Liability for gross breach of duty of care*
 - *Caused by senior management*
 - *Organisation not manager is liable*



Meaning of duty of care (s.2)

- **(1) A ‘relevant duty of care’, in relation to an organisation, means any of the following duties owed by it under the law of negligence**
- *Note:*
 - *criteria that of negligence i.e. common law of compensation for personal injury*
 - *s.2(4) clarifies that statutory amendments to be ignored*
 - *‘organisations’ the only ‘persons’ to whom the Act applies*

To whom is duty owed (s.2(1):



- (a) employees or other workers
- (b) visitors to premises (occupiers' liability)
- (c) in connection with —
 - Supply of goods or services
 - Construction or maintenance
 - Any other commercial activity
 - Use/keeping of plant or vehicle etc
- (d) a person listed in s.2(2) (detainees in custody etc)



Note



- Similarity to range of situations in which there is common law civil liability for negligently causing personal injury
- Whether a duty is owed to a person is a matter of law s.2(5)
- But liability only for 'gross' negligence
- Section 2(d) was not covered by commencement order so common (criminal) law still applies for the time being



Note

- S.2(6) common law rules exempting liability do not apply i.e. there is liability even if

(a) the 'accused' and 'victim' were jointly engaged in unlawful conduct (See *Pitts v Hunt* [1991] distinguished from (b) below)

(b) the 'victim' had accepted the risk (*volenti* rarely applies to employees any way and trespassers not owed occupiers common law duty)



What about?



- *Tomlinson v Congleton BC*
 - Occupier not liable to diver in shallow water
 - Lord Hoffmann:

The fact that such people take no notice of warnings cannot create a duty to take other steps to protect them ...A duty to protect against obvious risks or self-inflicted harm exists only in cases in which there is no genuine and informed choice ... as in the case of employees ... children ... despair of prisoners ...



The civil law of negligence for compensation

- Liability requires:
 - Duty of reasonable care to 'neighbour'
 - Breach of duty by negligent conduct
 - Breach caused (actionable) damage

Compare civil law with the Manslaughter Act



- Under Act:
- Duty of care to specified neighbours (s.2) SS.3-7 and spells out exceptions
- Breach – liability only for gross negligence (s.8)
- Damage – death provided a causal link



Special situations ss.3-7 No relevant duty



- S.3 Public policy decisions, actions, inspections – no liability (Note concerns allocation of resources – e.g. failure to maintain highway *Stovin v Wise* [1996]?)
- S.4 Military activities; training, operations (peacekeeping, terrorism, civil unrest, public disorder)
- S.5 Policing and law enforcement – operations in s.5(2) (terrorism, civil unrest or serious disorder – officers come under attack)
- S.6 Emergencies – relevant organisations (e.g. fire/NHS) responding to emergency

Special situations ss.3-7 No relevant duty



- S.7 Child protection and probation

- *Notes:*

ss.3-7 likely to be controversial – Was organisation carrying out relevant function? – E.g. was there a terrorism alert?

SS3,5,6,7, all owe relevant duty in S.2(1) (a) and (b) and in some cases (d) also

s.4 – questions may arise as to what military activities covered e.g. if not ‘front line’? E.g. Barrett v MoD

[1995] – no liability for death at military base of drunken soldier



Gross breach



- No liability if negligence not gross
- Jury has to decide S.8(1)(b)
- S.8(2) Jury has to consider whether failure to comply with health and safety legislation If so –
 - (a) how serious the failure
 - (b) how much of a risk of death it posed.



S. 8 provides jury MAY also

- (3)(a) consider the extent to which the evidence shows that there were attitudes, policies, systems or accepted practices within the organisation that were likely to have encouraged any such failure as is mentioned in sub.sec. (2), or have produced tolerance of it;
(b) have regard to any health and safety guidance that relates to the alleged breach.

(4) This section does not prevent the jury from having regard to any other matters they consider relevant.

NOTES

- Gross negligence the standard for liability for manslaughter at common law
- A matter of fact for the jury
- Can the evaluation be objective? If the consequence of the conduct is emotive e.g. Catastrophic rail crash
- Will the reference to health and safety legislation help to make decision objective? NB reference to 'systems'
- Gross negligence may occur without breach of legislation – e.g. no death

Remedial orders and publicity orders



- S.9 court may (on request of prosecution) may order the 'convict' to take specific steps to remedy
 - (a) the breach
 - (b) any matter that appears to the court to have resulted from the relevant breach and to have been a cause of the death;
 - (c) any deficiency, as regards health and safety matters, in the organisation's policies, systems or practices of which the relevant breach appears to the court to be an indication
- *Compare improvement notice – where conviction not needed-*

S. 10 – Not yet in force



- Provides for court's power to order organisation to publish:
 - Fact that convicted
 - particulars of offence
 - Amount of fine
 - Terms of remedial order



Particular categories of organisation



- Act applies to
 - Crown (s.11)
 - Armed forces (s.12)
 - Police forces (s.13)
 - Partnerships (s.14)



How is the law changed:



- New organisational offence created (s.1)
- No individual liability (s.18)
- When in force abolishes common gross negligence manslaughter abolished re corporations (s.20)
- Gives some guidance on gross negligence (s.8)
- Provides new penalties? (ss.9-10)
- *But DDP's consent needed for prosecution (s.17)*



How does this affect liability?



- Does not apply to manslaughter before Act in force
- Does not really introduce new penalties
- Does not directly address individual managers/employees
- Clearer organisational liability may make it easier to apply common law to individuals?
- Runs in parallel with HSWAct (s.19)
- Less strict than HSWAct



Less strict than HSW Act?

- 'reasonably practicable' v 'gross negligence'
- HSW Act covers risk personal injury not necessary
- HSW Act s.37 imposes corporate offence on 'guilty' director/manager (*R v P* [2007])
- Improvement/prohibition notices do not require prosecution
- *NB HSW Act does not apply to all organisations*

How does it affect liability cont'd?



- Problems of identifying 'gross' negligence likely to remain
- In large organisations identifying individual wrong doers at senior level likely to remain
- Likely to be charged in tandem with HMW Act with co-operation between HSE and CPS
- Can apply to situations not covered by HSW Act e.g. road transport –NB fleets

